

my

A
PROPOSAL

For Rendering
BANKRUPTCIES

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T O

Sir JONN EYLES, *Bart.*
HUMPHRY PARSONS,
JOHN BARNARD, } *Esqrs.*
MICAIAH PERRY, }

Aldermen of, and Representatives
in Parliament for, the City of
LONDON.

Gentlemen,

AFTER what is said in the
Title Page, it would be need-
less for me to make any Apo-
logy for my Addressing this
Work to Ye, as Ye are Representatives
of this City, and therein of the most con-
siderable Body of the Trading Part of this
Nation. To go on then,

It is to be observed, that the Acts of Parliament which are now in Force against Bankrupts, were all made long before our Trade or Riches were improved or increased, as they have been of late Years ; therefore, as Bankruptcies must, by Reason of such Improvement and Increase, be more common, and of greater Consequence now, than they were at the Time when those Laws were made ; it is reasonably to be supposed, and, indeed, Experience has made it sufficiently evident, That those old Acts of Parliament must, and do, fall short of serving the present Turn, and that a new One must be wanted. But how difficult a Task it is to frame a Law of this Sort, proper to answer all the Ends for which it may be thought necessary, appears as well from the unanswerable Objections which have been started to such Schemes, as have not been thought convenient to be put in Execution, as from the great Variety of Mischiefs which have attended the Execution of those which have been tryed ; such Inconveniencies having arisen therefrom, that the Legislature has not thought fit to continue or renew them : So that,

I THINK it is obvious, even to a superficial Considerer, that they must all have been deficient in one Point or other ; and yet, I believe, there is hardly any Evil amongst us at least, of so great Importance, that has been so much tampered with, or has had so many Remedies projected for it, though all Attempts have hitherto proved abortive ; for which Reason it has been charged by some, as if the Miscarriages must have proceeded from a Want of Skill or Inclination in the Lawyers who have made Attempts this Way, without considering the Intricacies that have been discovered in the Affairs of knavish Bankrupts, and the Impossibility to provide a Remedy against them all.

FOR my Part, I don't pretend here to point all, or any of the particular Inconveniencies of the former Schemes ; that they have been deficient and short of answering Expectation, I take for granted ; as to some of them, from their not being long-liv'd enough to be put in Practice ; and as to others, from their being suffered to expire after Tryal made, and that, seemingly, to the Good-liking and Satisfaction
of

of all those for whose Benefit they were designed ; nor am I vain enough, or Projector enough, to pretend compleatly to remove this *Opprobrium Juris-prudentum*, or to imagine myself equal to a Work, which no one has yet arrived to any Degree of Perfection in. If by clearing away the Rubbish, and preparing a Foundation, I can make the Work easy to a more masterly Hand, I shall be satisfied, because some Advantage must, undoubtedly, arise thereby in the mean Time to the Publick.

IN the Course of my Thoughts upon this Subject, I have observed, That all our modern Projects have only tended to put the Creditor into a Way to deal with a Man after he is become a Bankrupt ; whereas, in my Opinion, the most prudent, and, to the Publick, I am sure, the most beneficial Method would be (if possible) to prevent a Man's becoming a Bankrupt, or, at least, to hinder his involving others with him, by those Arts which are so commonly practis'd to preserve a Credit, and enable a Man to impose still further upon his Acquaintance, who, were his Circumstances known, is

a Bankrupt, it may be, at the very same Time he is drawing People in to trust him with Thousands.

COULD a Scheme be invented to render Bankruptcies less frequent amongst us, the Want of an Act of Bankruptcy would not be so great as it is at present, and the Inconveniencies which might be found in any future Law against Bankrupts, would not affect so generally as formerly they have done: That such a Scheme is to be found out and made practicable, I verily believe; and make no doubt to prove, that the following, if made a Law, would greatly contribute thereto.

THE Method I propose is, *That all Statutes, Merchant and Staple, Recognizances, and Bonds, entered into by any Person or Persons in Trade, residing within the Cities of London and Westminster, the Borough of Southwark, &c. for the Payment of any Sum or Sums of Money, and also all Judgments in any Court whatsoever sign'd against any of the Person or Persons above described, shall be register'd in a proper Manner, and by a proper Officer to be appointed, for that Purpose, by the Lord Mayor and Alder-*

Aldermen of London for the Time being; such Person to keep an Office, where Registers and Searches may be made for a moderate Fee.

SHOULD it be objected, *That some of the above-mentioned Securities may be searched for in other Places; I answer, That this Office would be more ready, less Trouble, and better known, than the other Offices, to which Recourse must be had for any Search.*

It has been a Complaint in Trade for a long Time, that a Man don't know who to trust, and with a great deal of Reason; for, as the Case stands now, whoever lends Money, or sells Goods upon Credit, really knows not what he does: The only Judgment that can be made, is by a Man's outward Appearance; but surely no body will insist, that any one is safe in making a Judgment of another Person's Circumstances only by the outward Appearance and Manner of Living of that other Person; Experience, dearly bought by many, has sufficiently convinced of the Fallacy and little Safety there is in depending upon this Rule. And yet what more certain
Course

Course can the Lender take at present, to be satisfied of the Borrower's Circumstances? Shall he ask the Borrower whether he owes any, and what Sum of Money to any other Person? Or should he; can he expect an Answer on which he may depend? Must he not, rather, expect a Misrepresentation instead of an ingenuous Dealing? Is it not proper that the Lender should have better Satisfaction, in this Case, than the bare Word of the Borrower?

How many have been drawn in to lend a Man Money, only upon the Credit of an outward Appearance, when this very Man has, at the same Time, owed to several Persons, to the Amount of a very great Sum of Money, more than he has had to pay, and his Creditors all ignorant of any Debt owing by him, except to themselves respectively? Whereas, in the Case above-mentioned, Men would not have the Opportunity of deceiving their Friends in the notorious Manner it has of late been practised; the Lender would have an Opportunity of discovering all Debts of a high Nature, and by that Means they might, if they pleas'd, forbear lend-

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ing where they should not think it proper; or if they should still think proper to lend, they might have the Satisfaction of seeing how far others were concerned, and moderate the Sum accordingly.

THERE is a Sort of People whose Practice it is to set out with a handsome Appearance, by which Means they gain a Credit; and, having soon spent their own Substance, they borrow Money of others; thereby they continue as long as they can to support their Extravagance, and never reckon their Misfortunes as such, till they are found out.

IT is frequent with a friendly Man to argue with himself, *Mr. Such-a-one lives in a handsome Manner; I can't scruple his Bond; any Man may want Money at a Pinch; he says, it will do him a great Service at this Juncture; why should I refuse him?* But if Mr. Such-a-one's first Bond were to be register'd, it would prevent his going on in this Practice.

THIS Method would not only be a Means to caution others in lending Money,

ney, but it would likewise put it in their Power to guard themselves against giving too large and long a Credit, in the Way of Trade, to Persons where it might not be so proper : Many Instances have we had of Creditors, on Simple Contracts, losing their whole Debts, and those large Debts too, on the Death of their Debtors, by Reason of Bonds being produced, which they knew nothing of, and the Preference which the Law gives to those Bonds. Can it be imagined, that the Simple Contract-Creditors would have given such Credit had they known of those Bonds ? Or, at least, would they not have pressed for Bonds to have been given to themselves, that they might have been upon an Equality with the rest of the Bond-Creditors ? And some Instances we have had, where even the Bond-Creditors have had no Share in their deceased Debtor's Estates, by Reason of Debts being discovered of a still higher Nature.

OUGHT not a Man to have some Possi-
 bility of knowing the Condition (if it be
 bad) of him whom he is about to entrust
 with his Property ? Or should a Man be
 blind.

blindfolded in the Disposal of his Property ?

WOULD not most, or at least many, of the Inconveniencies above mentioned, be removed, by making it necessary to Register all Debts of so high a Nature ?

IT is true, indeed, that under a Commission of Bankruptcy all Creditors are upon an Equality; but in Case of the Debtor's Death, before any Commission be issued out, he is got beyond the Reach of a Commission, and then the Case is as above related: And, with Regard to Commissions of Bankruptcy, thus much may be said, *That this Method will render the Necessity for them much less frequent, and the Debts to be proved under them, when necessary, much less both in Number and Value.*

I AM not insensible of the many Objections that will be made to this Method; not only amongst those whose Interest it may be to oppose it, but likewise by some honest, substantial, and well-meaning Persons, who have considered it only superficially.

A s

As for the Clamours of the former, they are no more to be regarded than the Testimony of a Party concerned in Interest, is to be minded by a Jury; but as for the latter, who are altogether disinterested, or, if at all concerned, I will admit are rather concerned to promote this Scheme; as for such Persons, their Objections ought to be considered with the greatest Impartiality.

I FORESEE that the most formidable, and, indeed, the only Objection of any Weight will be, *That this Project carries in it an Appearance of Ill-nature, and may have a Tendency to keep those down in the World, who are low already; and that it will be a Prejudice to young Beginners, who, by Reason of the Smallness of their own Fortunes, are very often obliged to borrow Money, in order to enable them to set up.*

I KNOW it will be said, *That there have been Instances where People have been reduced to necessitous Circumstances, and, by concealing their Necessities, have preserved their Credit so far, as to enable them to borrow Money, and, by a lucky Turn in their Affairs, they have recovered*

recovered themselves, not only so as to be in a Capacity to repay what they had by the Means aforesaid borrowed; but they have likewise surmounted all their Difficulties, and have become in a flourishing State: Whereas, say they, had this Scheme been established then, it would have made it necessary to reveal their Circumstances; which would not only have put it out of their Power to have retrieved themselves, but it would likewise have caused them to sink lower and lower. I believe there may be a few Instances where a Person has been reduced to low Circumstances, and then has extricated himself out of his Difficulties, and raised himself from a necessitous Condition, to a plentiful Fortune. But,

ON the other Side, how numerous are the Cases of these necessitous Persons, sinking gradually, till they come to be quite overwhelm'd, without any probable, or even possible Opportunity of retrieving, or mending their present Condition?

LIKE drowning Persons, are they, who, though desperate, yet being desirous to keep their Heads above Water as long as they

they can, they will lay hold of the nearest Friend within their Reach, and, when at last obliged to sink, they draw in others to partake with them of their Calamity ; willing and studious to put the evil Day far from them, and loath to submit to a Discovery of their Nakedness and Necessity, they go on from one Expedient to another, contract one Debt after another, and are only anxious about concealing the Debt, without ever entertaining any Thoughts of paying it ; thus they live upon the Industry and Fortunes of other People, and the Sum of Money last borrowed, enables them to gain a Credit for borrowing another ; by Means whereof, the first Lender is made an Instrument, unknown to himself, in carrying on the Cheat upon the Second, the Second upon the Third, and so on, as far as their Credit can be stretched, and as long as they can keep secret their real Circumstances.

I BELIEVE, that Persons of but a small Knowledge in the Trading Part of the World, know enough to be convinced, that the Number of Instances of the latter
Sort

Sort, is much greater than that of the fortunate People above mentioned.

THAT the ill Consequences of the Practices of the latter, as they are above related, are very great; and that such Practices have for some Time been too common amongst us, there are too many Sufferers to testify.

WHETHER it be not an Evil that deserves the Regard of the Legislature, and whether the Method here proposed may not be esteemed proper and effectual to prevent Impositions of the like kind for the future, I submit to the Judgment and Wisdom of the Parliament; and more particularly of Ye, Gentlemen, who now so worthily represent this City therein, and who have been, and no doubt will always be, ready upon all Occasions to take Care of, and promote the Interests of Your Fellow Citizens.

As to that Part of the Objection which seemed to regard the Interest of young Beginners, and to intimate, *That a Law of this Sort might be a great Discouragement to them, they being frequently oblig'd*
(by

(by reason of the Narrowness of their own Fortunes) to borrow Money of some Friend or Relation, to enable them to set up; I answer, That tho' I will not pretend to contradict that this may sometimes be the Case of young Beginners, yet I don't apprehend how this Scheme can affect them to their Prejudice.

IT being a Thing so common for a young Beginner to borrow Money to enable him to set up; the very Frequency of this Case is a Reason why he should not be injured by having his Debt registered; if it be so well known that such a Practice is common, how can it affect such a Person to have the Sum borrowed certainly known? Rather, it should be a Service to him; for otherwise, for Five Hundred Pounds borrowed, common Fame will talk of a Thousand.

BESIDES, I apprehend, that the Credit of a young Beginner depends more upon his Conduct, Frugality, and Industry, than upon his Substance. I believe there have been, and still are, many Instances of Men, who, at their first setting out in the World, were known not to be worth fifty

Pounds, but being possessed of the above-mentioned good Qualities, have, by the mere Dint thereof, soon gotten a very large Credit : A young Man, circumspect and industrious, shall be observed to surmount all the Difficulties which arise from a Narrowness of Fortune ; while, on the other Side, the Man of Fortune, who is careless, indolent, and too much addicted to Pleasure, shall miscarry, and become a Bankrupt in a few Years.

IT has been the Opinion of wise Men, that a sumptuary Law was never more wanted than at present, to discourage the Luxury and Extravagance, which have arrived to an ungovernable Height, and like a Pestilence infected all Degrees amongst us : Now with regard to People concerned in Trade (who should be the more immediate Care of the Legislature) this Project would have a Tendency, at least in some Measure to check the Profuseness and Luxury so justly complained of ; for if those People, against whom this Scheme is principally levelled, were but restrained, by the Method above proposed, from the Possibility of imposing upon their Friends and Acquaintance,

tance, were it not in their Power to deceive the World with specious Shews and Pretences, and thereby draw in People to lend them Money to support their Credit, after they have made away with their own Stock, they would take more Care not to come under a Necessity of borrowing, and that Care would make them both Frugal and Industrious; so that such a Law would be of Use to those very People whose Practices it would be designed to prevent, and the Publick likewise would thereby gain a useful Member, instead of one, not only useless, but diseased and contagious; for it may be observed, that these are commonly the People to whom our present Profuseness may be ascribed, fond of being thought polite, and proud of a Taste miscalled elegant; though, at the same Time, with Principles which a *Hotentot* would be ashamed of, they infect the Neighbourhoods where they live, by setting Examples, and laying Baits, too tempting not to be followed by all who are willing to be in the Fashion, and live genteely. Nor is it inconsistent with Reason, that these People should be, according to their Phrase, *very elegant*

Livers; for if the Fear of totally squandering away what they once had of their own, if the Terrors arising from the Misfortunes which they must needs foresee coming upon their Families, would not reclaim their Extravagance, at a Time when they had something left of their own, most certainly they will deny themselves nothing when they know that other People only must be Sufferers by their then Extravagance.

THUS, through a Want of Prudence at first, they become necessitous; and, in the End, through a Want of Honesty, and urged thereto by Necessity, they become guilty of Frauds of a more evil Tendency than Robberies, though not within the Reach of the Punishments inflicted upon Robbers. Most of which bad Effects would be prevented, or at least might be avoided by this Scheme; for it is against such People that this Proposal is directed. As for the Honest and Unfortunate, through unforeseen Accidents, it would not hurt them; they are not desirous to conceal their Circumstances from any who are disposed to lend them Money, or give them a large Credit;

dit; rather they think it their Duty to reveal them, that the Lender or Seller may know on what Bottom he risques his Money or Goods.

SOCIETIES were originally formed, and Governments instituted for the Good of such Societies; so that in making Laws it will not be denied, that the general Good ought to be consulted: But it being hardly possible to frame a Law, even in Matters of a more trifling Nature, that shall be altogether unexceptionable, and not injurious to somebody; therefore in making Laws the Good of the major Part is always to be preferred to the Interest of a few, and a greater Evil is certainly to be avoided, though a less may follow thereon.

THAT this Scheme has all the Advantages of the above-mentioned Proposition to recommend it, I hope I have sufficiently made evident.

HERE is 'an Evil then, I believe by every one confessed, by which Numbers of Families have been reduced, and some totally ruined: Here is a Scheme to restrain

strain the future Practice of this Evil ; which Scheme, should it be executed, could not be attended with any bad Consequences, unless the piqueing the Pride and Vanity of such as are desirous to be thought Men of Substance, when really they are not, may be reckoned a bad Consequence. On the other Side, it is to be presumed, that a great many Benefits, besides such as are immediately proposed, would casually arise to the Publick from the Execution of it ; and considering the manifold Deficiencies, which have been found in those Acts of Bankruptcy, which seemed to be the best calculated for the Relief of the Creditor, without too far oppressing the Debtor ; and that another is wanted, as appears from the Variety of Schemes which have been projected for the forming a new one ; and forasmuch as the Legislature is concerned to preserve and protect the several Properties of the respective Members of the Community, as well against the Frauds of the more Artful, as the Violence of the more Strong and Powerful ; it is to be hoped, that the Method here proposed will, at least, be thought worthy to be considered.

FOR

FOR though this Project, should it pass into a Law, might not come under the Denomination of a Bankrupt Act; yet so far may it have some Merit at least, in that it will remove many Difficulties at present complained of, for want of a good Act of Parliament of that Sort; and if such an Act should still be thought necessary, the Necessity will not be so great, and the Inconveniencies which may attend even a new Act, will not be of such Consequence as hitherto they have been; inasmuch as Debts to be proved under any Commission, subsequent to the Execution of this Scheme, would not be either so numerous or valuable as at present they too commonly are. And so far, I think, I may take upon me to affirm, whether this Method be thought worthy or not, that it would be more beneficial to the Publick to prevent Bankruptcies, and their ill Effects, than to rack the Invention in projecting Methods for dealing with Bankrupts after all the Mischief is done; which is to have but little more to do than, according to our *English Proverb*, *When the Steed is stolen to shut the Stable Door.*

WITH.

WITHOUT such a Law, it is to be feared, that Credit, which is the Life of Trade, must soon be reduced to a very low Ebb ; for as Frauds of this Nature multiply upon us, Persons in Trade will keep their Goods by them till an unexceptionable Purchaser offers; or sell them at an under Rate for ready Money, rather than sell them upon Credit to a Man, who, for ought the Seller knows, may owe several Sums of Money upon Bonds, &c. And yet this suspected Person may, at the same Time, be fit to be trusted. So that in such Cases the Seller and Buyer are both Sufferers for want of such a Method as is here proposed, by which the Seller may be satisfied.

THERE is another Mischief, which, being of an inferior Nature, may have escaped, or not come within the Observation of the Legislature ; I mean the fraudulent Bills of Sale which are frequently made of Goods, to prevent their being taken in Execution. It is very hard upon Plaintiffs, that, after a great deal of Trouble and Charge, having got an Execution against their Debtors, when the Sheriff's

Sheriff's Officer comes to serve this Execution upon their Goods, another Person has got Possession of them by Virtue of a Bill of Sale ; whereby the Property is transferred out of the Defendant to this other Person, and the Defendant being run away, the Plaintiff is not only forced to sit down with the Loss of his Debt, but he has a large Bill of Costs to pay besides.

I CONFESS, that this Case, though frequent, does not so often happen in Causes of great Consequence ; but that is no Reason why a Mischief of this Nature should not be guarded against. A Debt of forty or fifty Pounds, besides the Increase of Costs, lost to some People, may go a great way towards ruining them; and, as Evils are of a growing Nature, it is impossible to say, that this will always confine itself to small Debts ; therefore, in order to prevent the ill Effects of this Practice, I propose, That *all Bills of Sale of Goods, and other Sales of Goods, of a certain Value, which shall remain in the Possession of the Seller for any certain Time to be limited for that Purpose, shall be register'd, together with the Consideration*

really given for the same; and the Party so making the Bill of Sale, or such other Sale, to make Oath of the said Consideration.

IF it should be said, That, where such Sales are fraudulent, a Bill in Chancery may bring the Parties to a Discovery upon Oath of the Considerations, for which the same were made; I answer, That in Cases where small Sums are depending, and the Client is poor, the Expence of a Chancery Suit is too great to be borne, and even in Matters of a greater Concern, the Expence is not very desirable. Besides, if the Plaintiff can by any Means know of such Bill of Sale soon after it is made, he may have a better Opportunity of discovering the Fraud, and searching to the Bottom of it, than he can have after it has been made any considerable Time; he may hereby likewise avoid the Expence of suing his Debtor in many Cases, where, it may be, his whole Prospect in prosecuting such Suit, is an Expectation of being satisfied by taking such particular Goods in Execution, which, if he could inform himself, he would find were made away with by some Bill of Sale.

I HAVE one more Grievance to represent to you, and then I have done; and that is on Account of the ill Effects which arise for want of proper Regulations in the bringing *Writs of Error*.

IT is very common for a Defendant, after he has stav'd off the Judgment as long as he can, to the very great Charge and Injury of the Plaintiff, to bring his *Writ of Error*, though he has no manner of Pretence for assigning any real Errors in the Proceedings, or in the Judgment; and this is done, for the most Part, in Cases where the Sum sued for is so large, that the very Interest of the Money, during this vexatious Way of Proceeding, is more than sufficient to defray the Expences of prosecuting this *Writ of Error*; for I should have observed to you, that from the Time of Signing the Judgment all Interest ceases. So that the Defendant by this Means not only distresses the Plaintiff by keeping him out of his Money; but, in effect, he obliges the Plaintiff to be at the Expence thereof himself.

A REMEDY for this Evil is very obvious, and the Evil is in itself so very observable, that I need not enlarge upon it.

THUS have I troubled Ye, Gentlemen, with a Representation of a few Grievances, in the Redress whereof, I conceive, the Trading Part of this Nation, and chiefly your Principals, to be very much concerned.

IF the Projects herein contained should be thought sufficient for that Purpose, I hope they will prove beneficial to the Publick ; for then my End will be answer'd, and I shall depend on an Excuse for the Trouble hereby given Ye ; but should they undergo the usual Marks of Insignificancy, I shall have this Plea for my Excuse, and this Satisfaction, that my Attempts were well meant, and honestly designed ; and I hope, that they may at least stir up some more able Person to project Methods, which may be esteemed, and may prove more effectual, in the Removal of the Inconveniencies herein remonstrated against,

I am,

GENTLEMEN,

Your most obedient humble Servant.

P O S T S C R I P T.

SHOULD this Scheme of Registering meet with Encouragement, it would not be amiss to extend it to the several Counties of *England*, that thereby the Advantage of it may become universal. *London* being chiefly concerned in it, I thought proper to restrain myself to *London* only ; but should it be try'd and found advantageous here, it may soon be made to include the Country likewise.

F I N I S.



TO THE EDITOR

SHOULD this Scheme of Registering meet with Encouragement, it would not be amiss to extend it to the several Counties of the Kingdom, that thereby the Advantage of it may become universal. I being chiefly concerned in it, I thought proper to restrain myself to a few only; but should it be try'd and found advantageous here, it may soon be made to include the Country likewise.

F I W F S

